



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA- 2015-0488]**

**Qualification of Drivers; Exemption Applications; Narcolepsy**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from two individuals for exemptions from the following two Federal Motor Carrier Safety Regulations (FMCSRs) which prohibit operating a commercial motor vehicle (CMV) in interstate commerce. Section 391.41(b)(8) of the FMCSRs prohibit operation of a commercial motor vehicle by persons with either a clinical diagnosis of a condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV safely. Section 391.41(b)(9) of the FMCSRs prohibit operation of a commercial motor vehicle by persons with a mental, nervous, organic, functional disease, or psychiatric disorder likely to interfere with his/her ability to drive a commercial motor vehicle safely. If granted, the exemption would enable these individuals who have been diagnosed with narcolepsy and are receiving medical treatment to operate CMVs for 2 years in interstate commerce.

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2012-0081 using any of the following methods:

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov), at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Christine Hydock, Chief, Medical Programs Division , (202) 366-4001, or via email at fmcsamedical@dot.gov, or by letter to FMCSA, Room W64-113, Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)]. The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency may grant an exemption subject to specified terms and conditions. The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the

effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

FMCSA provides medical advisory criteria in the Medical Examination Report at 49 CFR 391.43 for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate commercial motor vehicles in interstate commerce. The advisory criteria for 49 CFR 391.41(b)(8), indicates that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication.

**The advisory criteria for 49 CFR 391.41 (b)(9), indicates that a variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead to incoordination, inattention, loss of functional control and susceptibility to accidents while driving.**

## **SUMMARY OF APPLICATIONS**

### **Jeremy Joseph Mertens**

Mr. Mertens is a 26 year old Class B CDL holder in Pennsylvania. An October 6, 2015 report from his sleep medicine physician says (Mr. Martens) was diagnosed with narcolepsy in 2011. His physician report further states that Mr. Mertens is treated with Nuvigil daily and has no problems with daytime somnolence. He has never had any history of sleepiness while driving, cataplexy or loss of consciousness. He understands that he has to continue to have adequate total sleep time and take his Nuvigil as prescribed every single day. His employer provided a letter stating that throughout his eight years of employment he has never had any problem performing his job duties because of his narcolepsy.

### **Michael Vaughn**

Mr. Vaughn is a 31 year old non-CDL holder from Georgia. An August 27, 2015 letter from his neurologist reports that as recently as July 13, 2015, Mr. Vaughn's sleep apnea is managed on CPAP and he is on medication to help him maintain wakefulness during the daytime. His neurologist supports Mr. Vaughn's request for an exemption which would allow him to operate commercial motor vehicles as he is on medication. Mr. Vaughn reports that he takes the medication Nuvigil.

## **Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the applications for exemption described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

**Issued on:** January 19, 2016

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Larry W. Minor  
Associate Administrator for Policy

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